

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF *
EAST GATE RECREATION ASSN., INC. *

Applicant *
William Landfair, Phillip Savard *
Brian Siverling, Robert Posilkin, Esq. *
Paul Dugan, Robert Steere *
For the Application *
Cathy Borten, Esquire *
Greg Diamond, Esquire *
Thomas Barnard, Esquire *
Elizabeth Cappiello, Esquire *

Attorneys for the Applicants¹ *

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Howard & Monica Finkel, *
Greer Dellafiora, Jeanine Resnick, *
Ac Tedesco, Annette Perlin, Dana Ettinger, *
Geraldyn Franceschini, Jamie Perry *

William J. Chen, Jr., Esquire *
Attorney for Adjacent Property *

Owners opposing the Application *

Grace Chen, Alan Privot, Brian Pashkoff, *
Cheryl Wetter, Don Pace, Jessica Bejaranno, *
Carolyn Tebo, Jerry Garson (for the SLCA), *
Susanne Lee (for the WMCCA), Fatima *
Sabri, Norma Collendani, Matthew Phillips, *
Beth Lilienstein, Marilyn Leon, Terrance *
McPherson, Ronald Danielian, Lawrence *
Monroe, Russell Reese and Joe Davis *

Witnesses Opposing the Application *

Before: Tammy J. CitaraManis, Hearing Examiner
Office of Zoning and Administrative Hearings

Board of Appeals Case No. S-596

HEARING EXAMINER'S REPORT AND RECOMMENDATION

¹ Ms. Borten and Mr. Diamond represent the Applicant, Cellco Partnership d/b/a Verizon Wireless (Cellco). Mr. Barnard and Ms. Cappiello represent the Co-applicant, East Gate Recreation Association, Inc. (East Gate).

I. STATEMENT OF THE CASE

On September 23, 2016, Cellco Partnership d/b/a Verizon Wireless (“Cellco” or “Verizon”) filed an Application for Conditional Use to permit construction of an unmanned wireless Telecommunications Tower (“Tower” or “Support Structure”) and related equipment area in the parking lot of the East Gate Swim and Tennis Club (Swim Club) under Section 59.3.5.2.C (Telecommunications Tower) of the Zoning Ordinance (2014). The property is owned by East Gate Recreation Association, Inc. (“East Gate” or “EGRA”)² Exhibits 1-3. Located at 10200 Gainsborough Road, Potomac, Maryland, the parcel is identified as Parcel C, Block J, in the East Gate of Potomac Subdivision.³ The larger parcel is divided into two lots. One is identified as Parcel C, Plat 10 (1.32 acres), and the other is identified as Parcel C, Plat 11 (3.4 acres) (Tax Account Nos. 10-00910008 and 10-00909658). The property lies within the R-200 Zone (Residential Detached), which permits telecommunications towers as a conditional use.

The property is already subject to an existing special exception (S-596) for a community swimming pool and tennis club.⁴ East Gate filed a request for an administrative modification of its special exception under Section 59.G-1.3(c)(1) of the Zoning Ordinance (2004) (Administrative

² Cellco filed the original application pursuant to the terms and authority of an executed Land Lease Agreement with East Gate dated November 2, 2015 (Lease) and Affidavit of Ownership dated July 22, 2016. Exhibits 2(a)-(b). However, Section 59-3.5.2.C.2.b.v of the Zoning Ordinance (2014) provides: “[t]he property owner must be an applicant for the conditional use for each support structure.” East Gate was not a named applicant on the original application. To correct this oversight, Cellco filed a Motion to Amend the Application to add East Gate as Co-applicant on October 18, 2016. Exhibit 27. The Motion to Amend was granted by Order dated November 22, 2016. Exhibit 63. The original application was corrected and signed by Michael Farber, President of the East Gate Board of Directors. Exhibit 27(a). Cellco and East Gate are collectively referred to as Applicants.

³ This site and the four East Gate communities surrounding the site were developed as a cluster subdivision. The site is delineated on the preliminary plan of subdivision and record plat No. 508-29, recorded July 30, 1970, and No. 508-43, August 7, 1970, as the future recreation area to be conveyed to EGRA. See, Exhibits 76(c)-(d). The developer conveyed the property to EGRA in 1976. Exhibit 76(o).

⁴ The special exception was modified in 1978 (lights), 1980 (hours of operation), 1980 (single basketball backboard) and 1983 (sale of frozen candy bars, ice cream and soda). The Board rescinded its approval of the single basketball backboard in a Resolution dated September 18, 1980. Case No. S-596 Exhibit 38(a). The Board found these to be minor modifications of the special exception and granted the requests without a public hearing pursuant to its authority under Section 59-G-1.3.(c)(1) of the Zoning Ordinance (2004).


Modification) to allow the proposed conditional use on the property and modify the existing parking lot. Case No. S-596, Exhibit 38(a).⁵ By Resolution dated October 10, 2016, the Board referred the administrative modification request to the Office of Zoning and Administrative Hearings (OZAH) “for consideration with Conditional Use Case No. [CU-T-17-01], and for the issuance of a report and recommendation on the requested modification.”⁶ *Id.*, p. 2. The matters were consolidated in the original Notice of Hearing issued October 13, 2016. Exhibit 24.

After a multiple-day hearing, the Hearing Examiner issued a Report and Decision on March 7, 2018, denying the conditional use application in CU-T 17-01. That Report and Decision has been forwarded to the Board of Appeals and is incorporated herein by reference.

II. FINDINGS, CONCLUSION AND RECOMMENDATION

Based on the Hearing Examiner’s decision denying the conditional use application in CU-T 17-01, and the entire Report and Decision in that case, the Hearing Examiner recommends that the Board of Appeals deny the administrative modification request in S-596, as moot. Since there will be no conditional use to share the site, the basis for the Applicant’s administrative modification request no longer exists.

Issued this 7th day of March, 2018.

By: 

Tammy J. CitaraManis
Hearing Examiner

⁵ Exhibits from the special exception file are specifically identified “Case No. S-596 Exhibit xx”. The Board of Appeals opinion is also identified as Exhibit 76 (I).

⁶ The Board found “that the effect of the proposed telecommunications tower and related equipment cabinet on the immediate neighborhood will be addressed in the context of the pending conditional use proceedings. Accordingly, the Board finds that the effect of these proposed additions on the swim club property on the immediate neighborhood cannot be known with certainty prior to the conclusion of the conditional use proceedings.” Case No. S-596 Exhibit 38(a), p. 2. By Memorandum dated October 10, 2016, the Board transmitted the special exception file to the OZAH. Case No. S-596 Exhibit 39.

NOTICES TO:

Cellco Partnerships, CU Applicant

East Gate Recreation Association, Inc., CU Applicant and Property Owner

Cathy Borten, Esquire, Attorney for Applicant Cellco

Greg Diamond, Esquire, Attorney for Applicant Cellco

Thomas Barnard, Esquire, Attorney for Applicant East Gate

Elizabeth Cappiello, Esquire, Attorney for Applicant East Gate

William J. Chen, Jr., Esquire, Attorney for Opposition Parties Howard & Monica Finkel,

Greer Dellafiora, Jeanine Resnick, Ac Tedesco, Annette Perlin, Dana Ettinger, Geralynn

Franceschini, and Jamie Perry

All parties of record and all who testified at the hearing

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Gregory Russ, Planning Department

Phillip Estes, Planning Department

Ehsan Motazed, Department of Permitting Services

Alexandre A. Espinosa, Director, Finance Department